IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18412 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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BRIJESHKUMAR S/O RAMSING ASHARAM MISHRA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RJ GOSWAMI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Brijeshkumar s/o. Ramsing Asharam Mishra, petitioner has filed this habeas corpus petition under Article 226

of the Constitution of India for quashing and setting aside the order of detention dated 8/8/2005 passed by the District Magistrate, Banaskantha. Petition was filed on 3/9/2005. On 9/9/2005, this Court (Coram:A.S.Dave, J) has issued rule which is returnable after four weeks. Hence, matter has been placed for hearing to this Court.

2. Mr.R.J.Goswami, learned advocate has relied upon the order of detention dated 8/8/2005 passed under the provisions of PASA Act. Detenu was also sent to the jail on the same day. He has also relied upon the grounds given by the authority on 8/8/2005. In the grounds of detention, it is stated that petitioner has committed two offences which are as under:

1. Offence committed on 18/3/2005 under the provisions of Section 25(1)(B)(E)of Arms Act by which he has kept one Indian made revolver valued at Rs.10,000/- and four kartoos valued at Rs.100/-.

2. Offence committed on 21/3/2005 under the provisions of Section 25(1)(B)(E)of Arms Act by which he has kept three Indian made revolver valued at Rs.30,000/-,

pistole valued at Rs.60,000/- and twenty kartoos valued at Rs.410/-, total Rs.90,410/-.

3.The learned counsel for the petitioner submitted that it was also stated that petitioner was 'dangerous person' within the meaning of provisions of PASA Act as he has committed offences under Arms Act and therefore, there is a breach of public order. It was also submitted that under the provisions of Arms Act, he has obtained bail.

4.The learned counsel for the petitioner submitted that petitioner cannot be held as a dangerous person. There can be breach of law and order situation but not public order. For the same, the learned counsel has relied upon judgment, reported in AIR (2003) SC 970, particularly para 5 and 6. The learned counsel has also relied upon division bench judgment of this Court in case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

5.On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has supported the order of detention on the basis of grounds stated in the order of detention

and he has also filed affidavit in reply of Mr.R.R.Chauhan in this behalf. In the affidavit, it is stated that the grounds are true and correct and the detenu falls within the meaning of dangerous person under the provisions of PASA Act and the authority has subjectively satisfied that the detenu is head-strong and dangerous person and his anti-social activities and criminal activities are directly or indirectly causing and are likely to cause harm, danger and alarm of insecurity among the general public or section thereof and he is thus, disturbing the public order and public peace and there is also grave or wide-spread danger to life and property.

6.The learned advocate for the petitioner stated that he has considered all the grounds of detention. It was also stated that petitioner is not dangerous person and his activities are not prejudicial to the public order. For the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and also relied upon judgment in LPA of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) and one other judgment of the Division Bench of this Court

(C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai.

7. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Arms Act along cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act

is not based on simple facts about registration of crimes under the Arms Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of the Supreme Court in Piyush Kantilal Mehta (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

9. I have considered the facts and circumstances of the case in view of the submissions made by the learned

counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

10. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Brijeshkumar s/o. Ramsing Asharam Mishra, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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